

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

**TERRY PRIESTER, JR., a minor,
by and through his parents, TERRY
PRIESTER, SR. and EVE PRIESTER**

PLAINTIFFS

V.

CASE NO. 1:03CV90

STARKVILLE SCHOOL DISTRICT

DEFENDANTS

ORDER

This cause comes before the Court on the defendant's motion [90-1] to dismiss all claims against Phillip Burchfield, Leon Clark, Bill Lee, Spence Rodman, John Patton, Tate Fischer, Tony Burkhalter, Bill Cook, Danny Carlisle, and Cleavon Hudson (collectively "the individual defendants") in all capacities and to dismiss all claims asserted against the Starkville School District other than the plaintiffs' claims under 42 U.S.C. § 1983 which were premised on racial discrimination against Terry Priester, Jr. in violation of his right to due process and the plaintiffs' Title VI claim.

In an order dated September 26, 2005, this Court granted the Defendants' Motion for Summary Judgment with regard to all individuals and official capacity claims against the individual defendants. The order also granted the plaintiffs 30 days to amend their complaint for the sole purpose of averring that the Starkville School District is a recipient of federal funds so as to cure the defects in the plaintiffs' Title VI claim.

On or about September 27, 2005, the plaintiffs filed a Second Amended Complaint which duly averred that the Starkville School District was indeed a recipient of federal funds. However, the Amended Complaint also re-alleged all individual and official capacity claims against the

individual defendants, as well as other claims previously dismissed. The plaintiffs concede that the Second Amended Complaint facially seeks to revive claims previously dismissed. However, they aver that the renewed claims are present in the complaint solely for the purpose of preserving issues pertaining to the prior summary judgment for appeal.

ACCORDINGLY, it is hereby ORDERED that all claims against Phillip Burchfield, Leon Clark, Bill Lee, Spence Rodman, John Patton, Tate Fischer, Tony Burkhalter, Bill Cook, Danny Carlisle, and Cleavon Hudson in their individual and official capacities are DISMISSED for the same reasons given in the Court's September 26, 2005 order. It is further ORDERED that all claims against the Starkville School District are DISMISSED *except* for the plaintiffs' claims brought under 42 U.S.C. § 1983 which are premised on racial discrimination against Terry Priester, Jr. and violation of his right to due process. It is further ORDERED that the plaintiffs' claims against the Starkville School District under Title VI are revived and that portion of the Court's September 26, 2005 order conditionally granting summary judgment on that issue is VACATED. Nothing in this order shall be interpreted to suggest that the plaintiffs have waived or otherwise relinquished their right to appeal those portions of the prior order which were decided adversely to them.

This is the 14th day of November, 2005.

/s/ Michael P. Mills
UNITED STATES DISTRICT JUDGE